



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.        | CONFIRMATION NO. |
|---|-------------|----------------------|----------------------------|------------------|
| 09/747,903  | 12/22/2000  | Stephen J. Dunston   | 2253.20-1                  | 4448             |
| 23559   | 7590        | 11/07/2005           |                            |                  |
| MUNSCH, HARDT, KOPF & HARR, P.C.<br>INTELLECTUAL PROPERTY DOCKET CLERK<br>3800 LINCOLN PLAZA<br>500N AKARD STREET<br>DALLAS, TX 75201 |             |                      | EXAMINER<br>RUDY, ANDREW J |                  |
|   |             |                      | ART UNIT                   | PAPER NUMBER     |
|   |             |                      | 3627                       |                  |

DATE MAILED: 11/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary****Application No.**

09/747,903

**Applicant(s)**

DUNSTON, STEPHEN J.

**Examiner**

Andrew Joseph Rudy

**Art Unit**

3627

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-67 is/are pending in the application.
- 4a) Of the above claim(s) 1-45 and 56-67 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 46-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. Claims 1-67 are pending. Claims 1-45 and 56-67 are still withdrawn from consideration as drawn to a non-elected invention.

### ***Specification***

2. The abstract of the disclosure is again objected to because it does not properly reflect the claim language. Correction is required. See MPEP § 608.01(b). It is noted Applicant did not address the previous objection noted from paragraph 5 of the January 14, 2004 Office Action.

### ***Claim Rejections - 35 USC § 112***

3. Claims 46-55 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 46, last line, "said particular client" lacks antecedent basis and is not clear. Applicant's August 10, 2005 REMARKS have been reviewed, but are not convincing. It is noted that Applicant's reference to the 35 USC 103 citation was inadvertent. Applicant must provide adequate support for each new term introduced into a claim so its meets and bounds may be ascertained. As is, the Examiner cannot determine such.

***Claim Rejections - 35 USC § 103***

4. Claims 46-55, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Diamond et al., US 6,370,515.

Applicant is directed towards page 4, paragraph 9 of the January 14, 2004 Office Action regarding Diamond. As understood, Diamonds system may be viewed as a shared system.

Applicant's August 10, 2005 REMARKS have been reviewed, but are not convincing. Applicant argues Diamond does not disclose "a system and method for providing direct channel distribution that bypasses the distributors, middleman and retailers which use the bulk terminal automation system" is not determinative as Applicant does not claim such. Also, no individual clients to expand their distribution of products on an incremental or variable cost basis are present in the claim language. Thus, Applicant's REMARKS are not convincing.

5. Further pertinent references are noted on the attached PTO-892.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

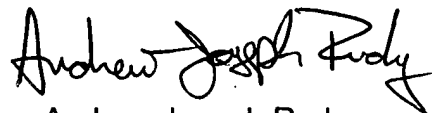
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Joseph Rudy whose telephone number is 571-272-6789. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander G. Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-283-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrew Joseph Rudy  
Primary Examiner  
Art Unit 3627